

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MANUEL GOMES,)	
)	
Petitioner,)	
v.)	CRIMINAL ACTION
)	NO. 14-CR-10023-NMG
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION REGARDING PETITIONER'S MOTION UNDER 28
U.S.C. § 2255 AND 18 U.S.C. § 3582(c)(2) (#57)

CABELL, U.S.M.J.

Manuel Gomes ("Gomes" or "the petitioner"), petitions for a writ of *habeas corpus* under 28 U.S.C. § 2255. Gomes argues that his lawyer provided ineffective assistance in failing to prevent the Court from applying a two-level role-in-the-offense enhancement in calculating his offense level under the Sentencing Guidelines (the "Guidelines"). He argues also that he is eligible pursuant to 18 U.S.C. § 3582(c)(2) to retroactively receive the benefit of a Guidelines amendment which would effectively shorten his sentence. (#57 at 1-3).

I. BACKGROUND

On November 4, 2014, Gomes pled guilty to an indictment charging him with distribution of cocaine base, in violation of 21 U.S.C. § 841(a)(1). (#42). Gomes pled guilty pursuant to a plea agreement which contemplated a Guidelines range of 41-51 months. (#51). Relevant here, that range did not include as part of its calculation a two-level enhancement for an aggravating role in the offense. By contrast, the Probation Office's presentence report (PSR) *did*

*After consideration of Petitioner's Objection thereto (Docket No. 77),
Report and Recommendation accepted and adopted.*

NMGorton, USDJ 12/5/16